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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,285	11/13/2003	Wamis Singhatat	ZL 0195	9330
23367	7590	12/22/2008		
GENE WARZECHA LINVATEC CORPORATION 11311 CONCEPT BOULEVARD LARGO, FL 33773			EXAMINER DORNBUSCH, DIANNE	
			ART UNIT	PAPER NUMBER
			3773	
			MAIL DATE	DELIVERY MODE
			12/22/2008 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/712,285

**Applicant(s)**

SINGHATAT, WAMIS

**Examiner**

DIANNE DORNBUSCH

**Art Unit**

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 6-12, 15, 19, 21, 22 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) 22 and 24-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6-12, 15, 19, and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 6-8, and 10-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith (2003/0088272).

Smith discloses the following claimed limitations:

Claim 1: A suture anchor for insertion into a body tissue cylindrical bone hole to anchor a suture to the body tissue bone (Fig. 1 and [0003]), the suture anchor (16, 18) comprising: a distal body portion (15) defining a longitudinal axis (Fig. 2), the distal body portion having a diameter sufficient to fit in said bone hole (Fig. 1), being insertable into the body tissue bone hole and defining a radially outwardly projecting anchoring member (2) operable to retain the suture anchor in the body tissue bone hole (Fig. 1 and [0049]); and a proximal body portion (26) integrally formed with and extending longitudinally from the distal body portion (Fig. 2 where it extends by legs 31 and 33), the proximal body portion having opposed gripping portions (40, 50) ([0050] first

sentence, [0052]), and Fig. 2) moveable transversely between an open position (Fig. 2C) and a closed position (Fig. 1), the gripping portions defining a transverse suture receiving aperture (combination of 35 and 60) between them, the aperture being relatively larger and able to receive the suture (10) in sliding relationship when the gripping portions are in the open position and the aperture being relatively smaller and able to grip the suture in gripping relationship when the gripping portions are in the closed position ([0052]-[0053] and [0056]), the proximal body portion being responsive to insertion into the bone hole (Fig. 1 and [0055]) to move the gripping portions from the open to the closed position as the suture anchor is pushed into the bone hole (Fig. 1 and [0055]-[0056]), wherein the proximal body portion has a maximum transverse dimension in the open position (Fig. 2C), the proximal body portion has a smaller maximum transverse position in the closed position (Fig. 1 since the legs (31 and 33) are compressed inside the bone), and the anchoring member has a maximum transverse dimension smaller than the maximum transverse dimension of the proximal body portion in the open position (Fig. 1 and 2 where the proximal body portion ends at point 4 which is larger than 2).

Claim 6: The proximal body portion includes at least one channel (the portions that connect 60 to 35) angling away from the aperture to receive the suture in a recessed protected position (Fig. 2).

Claim 7: That the anchoring member comprises at least one annular ring (see Fig. below).



**Claim 12:** A suture (10) wherein the suture has first and second ends, the first end being fixed to the suture anchor and the second end being receivable by the aperture in the open position to form a sliding suture loop, the second end being gripped by the aperture in the closed position to form a fixed suture loop (Fig. 1).

3. Claims 15, 19, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwartz et al. (US 6,293,961).

Schwartz discloses a distal body portion (20, distal portion), a proximal body portion (24) with opposed gripping portions (36 and 37) defining a suture receiving aperture (30) transverse to the longitudinal axis, a channel (22), the anchoring member includes an annular ring (distal most portion of 20 is an annular ring), a locking mechanism (36 and 37 portions that lock into each other, also disclosed are multiple teeth and grooves, one set could be the gripping portions and another set the locking mechanism), and in the open position the proximal portion is non-circular and is circular in the closed position (Fig. 9). The locking mechanism contains a male/female engagement mechanism (Fig. 9). The suture anchor is bioabsorbable (Col. 2 Lines 25-31). The suture has two ends and the second end is receivable in the aperture in the open position. A loop is formed as seen in Fig. 1.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (2003/0088272) in view of Schwartz et al. (US 6,293,961).

Smith teaches all the claimed limitations discussed above however, Smith does not disclose a locking mechanism comprises a first portion defining a lock projection and a second portion defining a lock recess for receiving the lock projection.

Schwartz discloses a locking mechanism (36 and 37 portions that lock into each other, also disclosed are multiple teeth and grooves, one set could be the gripping portions and another set the locking mechanism.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Smith with a locking mechanism as the one taught by Schwartz in order to be able to secure the suture in the bone.

***Response to Arguments***

6. Applicant's arguments with respect to claim 1 and its dependent claims have been considered but are moot in view of the new ground(s) of rejection.
7. Applicant's arguments filed September 8, 2008 with respect to claim 15 and its dependent claims have been fully considered but they are not persuasive.
8. In response to applicant's argument that the anchor of Schwartz is not inserted into a bone hole where the anchor is deformed by the bone to crimp the suture, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIANNE DORNBUSCH whose telephone number is (571)270-3515. The examiner can normally be reached on Monday through Thursday 7:30 am to 5:00 pm Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. D./  
Examiner, Art Unit 3773

/(Jackie) Tan-Uyen T. Ho/  
Supervisory Patent Examiner, Art Unit 3773